

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:17CR34

ALPHONSO JONES,

Petitioner.

**MEMORANDUM OPINION**

Alphonso Jones, a federal inmate proceeding pro se, filed this motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. In his § 2255 Motion, Jones raised the following grounds for relief:<sup>1</sup>

Claim One: "Counsel provided ineffective assistance . . . for his failure to object to the predicates used to designate Petitioner as a career offender in light of Mathis[v. United States, 136 S. Ct. 2243 (2016)]." (ECF No. 31, at 3.)

Claim Two: Counsel provided ineffective assistance because he "fail[ed] to file an appeal after being requested to do so." (Id.)

On May 12, 2021, the Court entered a MEMORANDUM ORDER (ECF No. 40) provided that:

At this juncture, Jones has only provided unsworn allegations in support of his claim that counsel rendered ineffective assistance. However, nothing before the Court, or in the record, contravenes Jones's contention that he asked counsel to file an appeal and counsel did not follow his instructions. Thus, based

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<sup>1</sup> The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects the punctuation the quotations from Jones's submissions.

on the current posture of this case, the Court finds it appropriate to expand the record, and "to test whether facially adequate allegations have sufficient basis in fact to warrant plenary presentation of evidence." Blackledge v. Allison, 431 U.S. 63, 80 (1977).<sup>2</sup> In light of the following, it is ORDERED that:

1. Within eleven (11) days of the date of entry hereof, Jones's former counsel, David Whaley, is directed to provide the Government with a sworn statement regarding his communications with Jones concerning the pursuit of an appeal.
2. Additionally, Whaley shall provide the Government with copies of all documents in his possession, including correspondence to and from Jones, regarding an appeal.
3. Within fourteen (14) days of the filing of the above from Whaley, the Government is directed to file a further response in the form of a motion for summary judgment, including all information and documents provided by Whaley. The Government shall properly serve Jones with the same.
4. Jones may submit any response within twenty (20) days after the Government files its further response. Jones is advised that the Court will not consider as evidence in opposition to the motion for summary judgment a memorandum of law and facts that is sworn to under penalty of perjury. Rather, any verified allegations must be set forth in a separate document titled "Affidavit" or "Sworn Statement," and reflect that the sworn statements of fact are made on personal knowledge and that the affiant is competent to testify on the matter stated therein. See Fed. R. Civ. P. 56(c)(4).

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<sup>2</sup> The Court finds this intermediate step appropriate, because after expansion of the record, the Court may determine that there are no material facts disputed, and that the matter may be resolved on summary judgment without the need for an evidentiary hearing. See United States v. White, 366 F.3d 291, 296-97 (4th Cir. 2004) (citations omitted).

5. Any reply by the Government must be filed within eleven (11) days.

(ECF No. 40, at 3-4.) That MEMORANDUM ORDER (ECF No. 40) was mailed to Jones at the address that he provided in his petition (ECF No. 31): FCI Williamsburg, P.O. Box 340, Salters, SC 29590 (ECF No. 40). On June 3, 2021, the Government filed the Motion for Summary Judgment with the sworn statement. (ECF No. 41.) For reasons neither explained nor readily apparent to the Court, the Government mailed a copy of the Motion for Summary Judgment to a different address: Alphonso Jones, Petitioner-Defendant, Reg. No 90964-083, c/o Pamunkey Regional Jail, 7420 Courtland Farm Road, Hanover, Virginia. (ECF No. 41, at 10.) The certificate of service also noted that the Motion for Summary Judgment was sent "to Alphonso Jones at the mailing address noted for prisoner mail for inmates at Pamunkey Regional Jail." (Id.) There is no indication in the record that Jones was housed at the Pamunkey Regional Jail at that time.<sup>3</sup> Therefore, it is unclear whether Jones received the Government's Motion for Summary Judgment.

What is clear is that on June 10, 2021, the United States Postal Service returned the May 12, 2021 MEMORANDUM ORDER to the Court marked, "RETURN TO SENDER" and "Inmate No Longer At This Facility." (ECF No. 42.) A review of the Bureau of Prisons

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<sup>3</sup> At the time the Presentence Report was filed, Jones was in pretrial detention in the Meherrin Regional Jail. (ECF No. 20, at 2.)

website reflects that Jones is currently housed at FCI Fort Dix, not a FCI Williamsburg, but he did not update his address with the Court.<sup>4</sup> Although Jones's failure to contact the Court and his failure to provide a current address indicates his lack of interest in prosecuting his § 2255 motion, the Court provided Jones with another opportunity to respond.

Accordingly, by MEMORANDUM ORDER entered on July 28, 2021, the Court directed the United States to send Jones a copy of the Motion for Summary Judgment to his current address at FCI Fort Dix and to file a certification of such mailing with the Court within (five) days of the date of entry thereof. The United States complied with that directive. In the June 28, 2021 MEMORANDUM ORDER the Court provided Jones with twenty (20) days to file a response. The Court explained that if Jones failed to respond within that time, the action would be dismissed without prejudice. See Fed. R. Civ. P. 41(b).

More than twenty (20) days have elapsed since the entry of the June 28, 2021 Memorandum Order and Jones has not filed a

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<sup>4</sup> See <https://www.bop.gov/inmateloc/> (last visited July 28, 2021).

response or otherwise communicated with the Court. Accordingly, the action will be dismissed without prejudice.

The Clerk of the Court is directed to send a copy of this Memorandum Opinion to Jones and all counsel of record.

It is so ORDERED.

/s/

*REP*

Robert E. Payne  
Senior United States District Judge

Richmond, Virginia

Date: September ✓, 2021